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9 **UNITED STATES DISTRICT COURT**

10 **NORTHERN DISTRICT OF CALIFORNIA**

11 KAREN SOVATH,

12 Plaintiff,

13 vs.

14 EXPERIAN INFORMATION
SOLUTIONS, INC.; EQUIFAX, INC.;
15 TRANSUNION, LLC; MARRIOTT
OWNERSHIP RESORTS, IMC.; V.W.
CREDIT, INC.; CAPITAL ONE
16 FINANCIAL CORPORATION;
NORDSTROM FSB; GENERAL
17 ELECTRIC CAPITAL RETAIL BANK;
TOYOTA FINANCIAL SERVICES AND
18 DOES 1 THROUGH 100 INCLUSIVE,

19 Defendants.

Case No. 5:15-CV-03849-EJD

Assigned to Hon. Edward J. Davila

**DEFENDANT SYNCHRONY
BANK'S NOTICE OF MOTION
AND MOTION TO DISMISS
PURSUANT TO FEDERAL RULE
OF CIVIL PROCEDURE 12(B)(6);
MEMORANDUM OF POINTS
AND AUTHORITIES**

[[Proposed] Order lodged
concurrently herewith]

Date: March 31, 2016
Time: 9:00 a.m.
Room: 4, 5th Floor

Complaint Filed: August 24, 2015
Trial Date: None

NOTICE OF MOTION AND MOTION

TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on March 31, 2016 at 9:00 a.m., or as soon thereafter as counsel may be heard in the above-captioned court, located at 280 South 1st Street, San Jose, California 95113, before the Honorable Edward J. Davila, defendant General Electric Capital Retail Bank, now known as Synchrony Bank (“Synchrony”) will move, and hereby does move, pursuant to the Federal Rules of Civil Procedure 12(b)(6) for an order dismissing the Complaint filed by plaintiff Karen Sovath (“Plaintiff”) for failure to state a claim on which relief can be granted. Further, Synchrony respectfully requests that Plaintiff’s Complaint be dismissed without leave to amend.

This motion will be based on this Notice of Motion and Motion, the Memorandum of Points and Authorities filed herewith, and the pleadings and papers filed herein.

DATED: November 2, 2015

REED SMITH LLP

By /s/ Raffi L. Kassabian
Raffi L. Kassabian
Attorneys for Defendant Synchrony
Bank

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1 Defendant General Electric Capital Retail Bank, now known as Synchrony
2 Bank (“Synchrony”), by and through counsel, hereby submits this Memorandum of
3 Points and Authorities in Support of its Motion to Dismiss Pursuant to Federal Rule of
4 Civil Procedure 12(b)(6).
5

6 I. INTRODUCTION

7
8 This action should be dismissed because Plaintiff fails to state a claim upon
9 which relief can be granted. Plaintiff’s Complaint fails to provide any detail about the
10 Synchrony reporting that she alleges is objectionable and never actually alleges what
11 reporting was inaccurate. Instead, she complains simply that Synchrony, along with
12 four additional defendants, reported “misleading and or inaccurate balances, past due
13 balances, monthly payment, and or listing the accounts as open, transferred, in
14 collections and or charged off rather than discharged in Bankruptcy.” (Compl. ¶ 24.)
15
16 These generalized allegations made against multiple defendants fail to state a
17 cognizable claim against Synchrony. Plaintiff’s threadbare Complaint fails to meet
18 even the most basic pleading standards. The allegations do not provide Synchrony,
19 nor any other defendant, with sufficient detail to formulate a response.
20
21

22 As a result of her failure to meet the pleading requirements in Federal Rule of
23 Civil Procedure 8, Plaintiff’s first claim under the Fair Credit Reporting Act
24 (“FCRA”), 15 U.S.C. § 1681s-2, must fail. Plaintiff’s additional theories of liability
25 against Synchrony depend on the viability of her first theory. As alleged here,
26
27 Plaintiff’s causes of action under the California Consumer Credit Reporting Agencies
28

1 Act (CCRAA), Cal. Civ. Code § 1785.1 *et. seq.*, and the California Unfair Business
2 Practices Act (UCL), Cal. Bus. and Prof. Code § 17200 *et. seq.*, can only survive if
3 Plaintiff properly pleads that the underlying reporting was in fact inaccurate. Plaintiff
4 fails to make that threshold allegation because she does not describe in any manner the
5 specific reporting that Synchrony made that is inaccurate. She alleges no additional
6 facts that would support a claim either under the CCRAA or under the UCL. Further,
7 the UCL claim must be dismissed because it is preempted by the FCRA. Therefore,
8 Plaintiff's Complaint fails to state any claim and must be dismissed in its entirety with
9 prejudice.
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13 II. FACTUAL ALLEGATIONS

14 According to the Complaint, Plaintiff filed for Chapter 7 bankruptcy on
15 February 28, 2011. (Compl. ¶ 5.) The Complaint does not allege if or when
16 Plaintiff's debts were discharged in bankruptcy. In April 2015, Plaintiff "noticed
17 several tradelines all reporting misleading and or inaccurate balances or past due
18 balances owed on the account and or listed the account as transferred and or charged
19 off rather than discharged in Bankruptcy." (Compl. ¶¶ 6-7.)
20
21

22 Plaintiff allegedly disputed these "inaccurate" tradelines with Experian
23 Information Solutions, Inc.; Equifax, Inc.; and TransUnion, LLC (collectively, the
24 "CRAs"). (Compl. ¶ 8.) Plaintiff, on information and belief, alleged that each CRA
25 sent notice of the disputes to each of the other defendants. (Compl. ¶ 9.)
26
27

28 Plaintiff alleges that Synchrony, along with six other defendants, reported

1 falsely to the CRAs “a misleading and or inaccurate balances or past due balances
 2 owed on the accounts, monthly payment, and or listed the accounts as open,
 3 transferred and or charged off rather than discharged in Bankruptcy.” (Compl. ¶ 10.)
 4 Missing from Plaintiff’s Complaint against Synchrony is any allegation that explains
 5 *what* was being reported and *how* it was being reported. There is no allegation that
 6 Synchrony’s reporting was factually inaccurate.
 7
 8

9 III. LEGAL ARGUMENT

10 A. Legal Standard For Motion Under Rule 12(b)(6).

11 A motion to dismiss brought pursuant to Rule 12(b)(6) tests the legal
 12 sufficiency of the complaint to determine whether there is a “lack of cognizable legal
 13 theory,” or “the absence of sufficient facts alleged under a cognizable legal theory.”
 14 *Balistreri v. Pacifica Police Dep’t.*, 901 F.2d 696, 699 (9th Cir. 1988). Rule 8(a)(2)
 15 requires that a pleading contain “a short and plain statement of the claim showing that
 16 the pleader is entitled to relief.” Fed. R. Civ. Proc. 8. The function of this pleading
 17 requirement is to “give the defendant fair notice of what the ... claim is and the
 18 grounds upon which it rests.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555
 19 (2007). When considering motions to dismiss, the court must accept all “allegations of
 20 material fact as true and construe them in the light most favorable” to the plaintiff.
 21 *Campanelli v. Bockrath*, 100 F.3d 1476, 1479 (9th Cir. 1996).
 22
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26 The court is not required to “accept as true allegations that are merely
 27 conclusory, unwarranted deductions of fact, or unreasonable inferences.” *Sprewell v.*
 28

1 *Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). *See also Epstein v. Wash.*
 2 *Energy Co.*, 83 F.3d 1136, 1140 (9th Cir. 1996) (“All allegations of material fact are
 3 taken as true and construed in the light most favorable to plaintiff. However,
 4 conclusory allegations of law and unwarranted inferences are insufficient to defeat a
 5 motion to dismiss for failure to state a claim”). “While a complaint attacked by a Rule
 6 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff’s
 7 obligation to provide the ‘grounds’ of her ‘entitlement to relief’ requires more than
 8 labels and conclusions, and a formulaic recitation of the elements of a cause of action
 9 will not do.” *Wagenaar v. Robison*, No. 2:13-CV-01202-APG, 2014 WL 4206703, at
 10 *2 (D. Nev. Aug. 22, 2014). A complaint does not “suffice if it tenders ‘naked
 11 assertion[s]’ devoid of ‘further factual enhancement.’” *Ashcroft v. Iqbal*, 556 U.S.
 12 662, 678 (2009) (*quoting Twombly*, 550 U.S. at 557). “Factual allegations must be
 13 enough to raise a right to relief above the speculative level.” *Twombly*, 550 U.S. at
 14 555.

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 20 **B. Plaintiff Fails To Meet The Pleading Requirements in the Federal Rules of Civil Procedure.**

21 Plaintiff fails to meet the requirements of the Federal Rules of Civil Procedure
 22 by failing to plead with the specificity required in Rule 8. There are several
 23 paragraphs that contain general allegations directed at five defendants and which
 24 include a laundry list of potential violations separated often by “and[/]or.” (*See*
 25 *Compl.* ¶¶ 10, 25, 28.) This pleading style – making generalized allegations against
 26
 27
 28

1 multiple defendants without providing any differentiation or specific allegations as to
2 each individual defendant – violates Rule 8. *See Corazon v. Aurora Loan Servs.*,
3 2011 WL 1740099, *4 (N.D. Cal. May 5, 2011) (“By failing to differentiate among
4 defendants or specify which defendant is subject to Plaintiff’s various allegations,
5 Plaintiff’s Complaint violates Rule 8(a)(2) because it fails to provide [defendant] with
6 fair notice of its alleged misconduct”), *In re Sagent Tech., Inc.*, 278 F. Supp. 2d 1079,
7 1094 (N.D. Cal. 2003) (“[T]he complaint fails to state a claim because plaintiffs do
8 not indicate which defendant or defendants were responsible for which alleged
9 wrongful act”); *Aaron v. Aguirre*, 2007 WL 959083 (S.D. Cal. Mar. 8, 2007)
10 (“Undifferentiated pleading against multiple defendants is improper”); *Gauvin v.*
11 *Trombatore*, 682 F. Supp. 1067, 1071 (N.D. Cal. 1988) (“Plaintiff must allege the
12 basis of his claim against each defendant to satisfy Federal Rule of Civil Procedure
13 8(a)(2), which required a short a plain statement of the claim to put defendants on
14 sufficient notice of the allegations against them”); *Gen-Probe, Inc. v. Amoco Corp.,*
15 *Inc.*, 926 F. Supp. 948, 960 (S.D. Cal. 1996) (“[Rule 8] require[s] that the defendant
16 be given ‘fair notice of what the plaintiff’s claim is and the grounds upon which it
17 rests.’ The plaintiff’s shotgun approach is clearly deficient to serve either of those
18 purposes”); *Marin v. Eidgahy*, 2011 WL 2446384, *4 (S.D. Cal. June 17, 2011)
19 (“Plaintiff’s vague allegations that repeatedly group all defendants together under each
20 claim for relief are not sufficient”).
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Here, Synchrony does not know *what* it is alleged to have reported. It may have been “balances” or “past due balances owed” or a “monthly payment.” (Compl. ¶ 10.) Next, Synchrony does not know *how* its reporting was allegedly inaccurate. It may be that it listed an account as “open” or “transferred” or “charged off.” (*Id.*) Without the necessary factual information, these are nothing more than naked assertions that do not raise the right to relief above the speculative level. Because the Complaint fails to state a cognizable claim, it must be dismissed.

C. Plaintiff Fails To State A Cause Of Action For A Violation Of The FCRA Because Plaintiff Fails to Identity The Information That Allegedly Was Inaccurately Reported by Synchrony.

The FCRA imposes obligations on persons or entities, such as creditors, that “furnish” information to credit reporting agencies and divides those obligations into two components. *See* 15 U.S.C. § 1681s-2. Under subsection (a) of Section 1681s-2, a furnisher has a duty to report “accurate information” to the credit reporting agencies. *See id.* Under subsection (b) of Section 1681s-2, a furnisher must conduct an investigation in response to a notice of dispute from a credit reporting agency. *See id.* Although furnishers have obligations under both subsections, only subsection (b) contains a private right of action. *See Gorman v. Wolpoff & Abramson, LLP*, 584 F.3d 1147, 1162 (9th Cir. 2009).¹

¹ To the extent that Plaintiff is alleging that Synchrony violated section 1681s-2(a) of the FCRA, such allegation cannot be sustained given that there is no private cause of action for subsection (a). *See Nelson v. Chase Manhattan Mortg. Corp.*, 282 F.3d 1057, 1060 (9th Cir. 2002).

1 In order to state a claim under Section 1681s-2(b) the FCRA, a plaintiff must
2 allege that the defendant in fact furnished inaccurate credit information. *See Kruse v.*
3 *Experian Information Solutions, Inc.*, 471 Fed. Appx. 714, 715 (9th Cir. 2012)
4 (holding that inaccuracies in credit report were required to maintain FCRA claim);
5 *Carvalho v. Equifax Information Services, LLC*, 629 F.3d 876, 890 (9th Cir. 2010)
6 (holding that many courts, including the 9th Circuit, have imposed a requirement that
7 an actual inaccuracy exist for a FCRA claim); *Klaizner v. Countrywide Financial*,
8 2015 WL 627027, at *5 (D. Nev. 2015) (holding that an element of an FCRA claim
9 against a furnisher of credit information is an inaccuracy in the plaintiff's credit
10 report); *Giovanni v. Bank of America N.A.*, 2012 WL 6599681, at *5 (N.D. Cal. Dec.
11 18, 2012) (“*Giovanni I*”) (“The Court first considers whether [defendant] reported
12 inaccurate information and, if necessary, then considers whether it is liable for failing
13 to correct that information”); *Mortimer v. JP Morgan Chase Bank, N.A.* (“*Mortimer v.*
14 *Chase*”), 2012 WL 3155563, at *3 (N.D. Cal. August 2, 2012) (“This [FCRA] claim is
15 insufficiently alleged because Mortimer has not asserted that [the bank] reported
16 incomplete or inaccurate information in the first place.”).

17 It is not enough for a plaintiff to merely allege that she disputes something
18 being reported because such general allegations do not “sufficiently identify the
19 inaccuracies of the alleged reporting.” *Iyigun v. Cavalry Portfolio Services, LLC*, No.
20 cv-12-8682, 2013 WL 950947, *1 (C.D. Cal. Mar. 12, 2013). *See also Littleton v.*
21 *Experian Information Solutions, Inc.*, 15-cv-01619, 2015 WL 4638308, *2 (N.D. Cal.

1 Aug. 4, 2015) (“Plaintiff’s unspecific allegations alluding to ‘misleading and or
2 inaccurate balances or past due balances owed’ with regard to some unidentified
3 account is not enough for [defendant] ... to understand the basis for any potential
4 liability”).

5
6 The Complaint here is very similar to that which was dismissed in *Littleton*; in
7 fact, that case was filed by the same counsel representing Plaintiff here. Plaintiff’s
8 allegations do not sufficiently identify the alleged inaccuracies. As such, Plaintiff
9 fails to allege what Synchrony was reporting and how it was inaccurate. This failure
10 is fatal to her Complaint. Plaintiff’s FCRA claim must be denied for failure to state a
11 claim.
12
13

14 **D. Plaintiff Also Fails To State A Cause Of Action For A Violation Of The**
15 **Consumer Credit Reporting Agencies Act.**

16 Plaintiff’s second cause of action under the CCRAA is entirely dependent on
17 the strength of her first argument, which, as explained above, must fail. As a result,
18 the CCRAA cause of action must also be dismissed.
19

20 Under the CCRAA, “a person shall not furnish information on a specific
21 transaction or experience to any consumer credit reporting agency if the person knows
22 or should know the information is incomplete or inaccurate.” Cal. Civ. Code
23 § 1785.25(a). “In determining whether an item of credit is inaccurate, the same test is
24 applied under the FCRA and the CCRAA.” *Sheridan v. FIA Card Services, N.A.*,
25 2014 WL 587739, *6 (N.D. Cal. Feb. 14, 2014); *see also Carvalho v. Equifax*
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1 *Information Services, LLC*, 629 F.3d 876 (9th Cir. 2010). Plaintiff never alleges that
 2 Synchrony's reporting was in fact inaccurate. As described above, Plaintiff fails to
 3 allege what was inaccurate about Synchrony's reporting. Without this, there can be
 4 no CCRAA violation. As such, Plaintiff's second cause of action under the CCRAA
 5 must be dismissed.
 6

7
 8 **E. Plaintiff's Cause of Action For A Violation Of The Unfair Business
 Practices Act Is Preempted By The FCRA.**

9
 10 The FCRA states that "[n]o requirement or prohibition may be imposed under
 11 the laws of any State (1) with respect to the subject matter regulated under... (F)
 12 section 1681s-2 of this title, relating to the responsibilities of persons who furnish
 13 information to consumer reporting agencies." 15 U.S.C. § 1681t(b)(1)(F). The plain
 14 language of the statute "expresses Congress's intent to preclude state law claims
 15 against furnishers of information, and instead to subject them solely to the FCRA."
 16 *Howard v. Blue Ridge Bank*, 371 F. Supp. 2d 1139, 1144 (N.D. Cal. 2005). *See also*
 17 *Miller v. Bank of America Nat. Ass'n*, 858 F. Supp. 2d 1118, 1124 (S.D. Cal. 2012)
 18 ("The district courts read the FCRA's preemption clause to preclude all state common
 19 law and statutory claims, to effect Congress' intent to limit a plaintiff's recover
 20 against furnishers of credit information to only the remedies provided under the
 21 FCRA"). Because "Congress intended the FCRA to preempt state laws regarding the
 22 duties of furnishers and the remedies available against them, rather than allowing
 23 different liabilities for furnishers depending on the state of suit," *Howard*, 371 F.
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Supp. 2d at 1144, the California UCL is preempted. As such, Plaintiff cannot sustain a cause of action under the UCL and it must be dismissed.

F. Plaintiff Also Fails To State A Cause Of Action For A Violation Of The Unfair Business Practices Act.

Even if it were not preempted, the UCL claim is still not sustainable. Plaintiff's third cause of action similarly relies on the general factual argument that Synchrony's reporting of Plaintiff's account without providing more detail about what made it inaccurate. Plaintiff alleges that Synchrony violated the UCL because the acts and practices described elsewhere in the Complaint are unlawful under the CCRAA. (See Compl. ¶ 63.) This claim "merely conclusorily alleges the barest elements of an UCL claim, and directs defendant[] to scour the remainder of the complaint to determine which, if any, of the allegations incorporated by reference provide the basis for this claim." *Champlaie v. BAC Home Loans Servicing, LP*, 706 F.Supp.2d 1029, 1062-63 (E.D. Cal. 2009). Because Plaintiff's CCRAA claim fails, the UCL claim must fail as well. As in *Champlaie*, the Complaint "fails to provide notice of the basis for any claim arising out of unfair or fraudulent business practices." *Id.*

IV. CONCLUSION

For all of the foregoing reasons, Plaintiff's Complaint should be dismissed in its entirety with prejudice.

1 DATED: November 2, 2015

2 Respectfully submitted,

3 REED SMITH LLP

4 By /s/ Raffi L. Kassabian
5 Raffi L. Kassabian

6 *Attorneys for Defendant Synchrony*
7 *Bank, formerly known as GE Capital*
8 *Retail Bank*

CERTIFICATE OF SERVICE

I hereby certify that on November 2, 2015, I caused the foregoing to be electronically filed with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on November 2, 2015.

DATED: November 2, 2015

Respectfully submitted,

REED SMITH LLP

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